

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

BRADLEY HAUGH)	
Claimant)	
VS.)	
)	
CONTINENTAL CONSTRUCTION COMPANY OF TOPEKA)	
Respondent)	Docket No. 261,928
AND)	
)	
TRINITY UNIVERSAL INSURANCE COMPANY)	
Insurance Carrier)	
AND)	
)	
WORKERS COMPENSATION FUND)	

ORDER

Claimant appealed the July 20, 2001 preliminary hearing Order entered by Administrative Law Judge Bryce D. Benedict.

ISSUES

The parties stipulated that on June 25, 2000, claimant was injured while working for respondent. The sole issue is whether claimant was working for respondent as an employee or independent contractor at the time of the accident. In the July 20, 2001 preliminary hearing Order, Judge Benedict determined that claimant was an independent contractor and denied claimant's request for benefits. Claimant contends the Judge erred.

The only issue before the Board on this appeal is whether claimant was an employee or an independent contractor on the date of accident.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date, the Board finds and concludes:

1. The finding that claimant was working for respondent as an independent contractor rather than as an employee on the date of accident should be reversed.

2. The respondent is operated by claimant's father, Ivan Haugh, who is a real estate developer and architect. In January 2000, the elder Mr. Haugh approached claimant about working as the construction manager and a laborer on a remodeling project involving a low income apartment complex located near Rolla, Kansas. Because of federal government bonding and insurance requirements, Mr. Haugh advised claimant he would have to be treated as an employee. The elder Mr. Haugh understood that the federal government required his company to provide workers compensation insurance on everyone who worked on the project.

3. According to the elder Mr. Haugh, respondent is incorporated and he is its president. The corporation, which was initially formed to build single family dwellings, was inactive but was called upon for the Rolla, Kansas, remodeling project because of the job's bonding requirements. According to the elder Mr. Haugh, Continental Realty is respondent's parent company and Continental Realty is owned by the elder Mr. Haugh and several others.

4. Claimant began working on the remodeling project on approximately February 1, 2000. As the construction manager, claimant's job was to obtain subcontractors and bids for the remodeling project. The elder Mr. Haugh then determined which subcontractors would be used and how much they would be paid. The elder Mr. Haugh, not claimant, entered into the contracts with the subcontractors. As a laborer, claimant installed the plasterboard and the plumbing. But claimant believed his primary job was acquiring materials and overseeing the project.

5. As the remodeling project progressed, claimant told his father what work needed to be done and the elder Mr. Haugh then determined whether the work would be done or not. The elder Mr. Haugh decided what materials would be used and where the materials would be purchased. The elder Mr. Haugh also provided claimant a company credit card to purchase materials at Home Depot.

6. Claimant reported directly to his father and both testified that the elder Mr. Haugh could terminate claimant's services. When claimant began working for respondent, the elder Mr. Haugh offered claimant a truck to use on the remodeling project but the parties agreed that claimant would use his own truck and be reimbursed his expenses. Claimant provided most of the tools that he personally used on the project but respondent did provide such items as paint sprayers.

7. Claimant was unable to find a painter for the remodeling project and, therefore, hired his two children to paint and move some gravel. Claimant personally paid his children for their work. Claimant did not believe he had the authority to hire other individuals to work on the project.

8. Claimant did not prepare an employment application before beginning work on the remodeling project, nor did he enter into a contract with respondent to perform a certain piece of work for a fixed price. The record is unclear as to the parties' agreement

regarding how claimant was paid. Claimant testified his pay was based upon the combination of the number of hours that he worked, as estimated by the elder Mr. Haugh, along with the amount of work that was completed and approved. Respondent did not withhold taxes from claimant's earnings.

9. Claimant no longer works for respondent and has filed a wage claim against it. In an Employer's Answer to Claim for Wages document signed on April 2, 2001, by the elder Mr. Haugh, respondent indicates that claimant's last day of work for respondent was June 25, 2000, and that claimant was paid \$20 per hour, or more, when considering the potential income from the job and the hours required to complete the project.

10. The primary test in determining whether an individual is an employee or an independent contractor is whether the employer has the right of control and supervision over the work performed and the right to direct how that work is performed.¹

11. In addition to the right to control and the right to discharge a worker, other commonly recognized factors for determining whether a worker is an employee or independent contractor are: (1) the existence of a contract to perform a certain piece of work at a fixed price; (2) the independent nature of the worker's business or distinct calling; (3) the employment of assistants and the right to supervise their activities; (4) the worker's obligation to furnish tools, supplies, and materials; (5) the worker's right to control the progress of the work; (6) the length of time that the worker is employed; (7) whether the worker is paid by time or by the job; and (8) whether the work is part of the regular business of the employer.²

12. Additionally, the Workers Compensation Act is to be liberally construed to bring employers and employees within its provisions and protections. The Act provides:

It is the intent of the legislature that the workers compensation act shall be liberally construed for the purpose of bringing employers and employees within the provisions of the act to provide the protections of the workers compensation act to both. The provisions of the workers compensation act shall be applied impartially to both employers and employees in cases arising thereunder.³

13. The Board concludes that claimant was respondent's employee on the date of accident. Respondent retained the right to control and supervise claimant's work, along

¹ *Wallis v. Secretary of Kans. Dept. of Human Resources*, 236 Kan. 97, 689 P.2d 787 (1984).

² *McCubbin v. Walker*, 256 Kan. 276, 886 P.2d 790 (1994).

³ K.S.A. 1999 Supp. 44-501(g).

with the right to discharge him at any time. The parties did not enter into a contract for claimant to perform a certain piece of work for a fixed price. Respondent provided all the materials for the remodeling project and even decided where those materials would be purchased. Respondent approved the subcontractors who would work on the project and determined the amount they would be paid. Further, the parties agreed that claimant would be considered an employee on the project and be provided with workers compensation insurance coverage.

WHEREFORE, the Board reverses the finding that claimant was respondent's independent contractor on the date of accident and finds that claimant was respondent's employee. This claim is remanded to the Administrative Law Judge to enter a preliminary hearing order consistent with that finding.

IT IS SO ORDERED.

Dated this ____ day of September 2001.

BOARD MEMBER

c: Timothy E. Power, Attorney for Claimant
Jeffery R. Brewer, Attorney for Respondent and its Insurance Carrier
Jeff K. Cooper, Attorney for Fund
Bryce D. Benedict, Administrative Law Judge
Philip S. Harness, Workers Compensation Director